



**DEPARTMENT OF JUSTICE
Drug Enforcement Administration**

**Ernesto C. Torres, M.D.;
Decision and Order**

On July 20, 2020, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government or DEA), issued an Order to Show Cause (hereinafter, OSC) to Ernesto C. Torres, M.D., (hereinafter, Registrant), of Frederick, Maryland. Government's Request for Final Agency Action (hereinafter, RFAA) Exhibit (hereinafter RFAAX) 4 (OSC), at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. AT8751213. *Id.* It alleged that Registrant is without "authority to handle controlled substances in Maryland, the state in which [Registrant is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. § 824(a)(3)).

Specifically, the OSC alleged that "[o]n January 6, 2020, the [Maryland Board of Physicians (hereinafter, MBP)] issued [a] Final Decision and Order on Order for Summary Suspension, whereby the MBP affirmed its May 2019 suspension ruling. Moreover, during the pendency of the above MBP suspension proceedings, [Registrant's] state medical license expired on September 30, 2019, and has not been renewed." *Id.* at 2. The OSC further alleged that Registrant is not eligible to obtain or retain a DEA registration because he lacks state authority to handle controlled substances in Maryland. *Id.*

The OSC notified Registrant of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2-3 (citing 21 C.F.R. § 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. § 824(c)(2)(C)).

I. Adequacy of Service

A DEA Diversion Investigator (hereinafter, DI) provided details regarding DEA's "multiple efforts" to serve Registrant with the OSC, which were complicated by the fact that Registrant is currently at a Maryland Department of Health facility. RFAAX 11, at 3 (Declaration of Diversion Investigator, dated October 22, 2020). The DI stated that due to visitor restrictions at the facility, the DI arranged to email the OSC to Registrant's doctor, who confirmed via reply email that Registrant had received the OSC. Registrant's doctor attached a signed DEA Form 12, Receipt for Cash or Other Items, which demonstrated that Registrant received the OSC on September 17, 2020, and was signed by Registrant and witnessed by his doctor. *Id.* at 4; *see also* RFAAX 6, at 1 (signed DEA Form 12).

The Government forwarded its RFAA along with the evidentiary record, to this office on October 23, 2020. In its RFAA, the Government represents that Registrant has not requested a hearing nor "otherwise corresponded or communicated with DEA regarding the . . . [OSC], including the filing of any written statement in lieu of a hearing' and therefore has waived his right to a hearing." RFAA, at 6 (quoting *Warren B. Dailey, M.D.*, 82 Fed. Reg. 46,525-26 (2017); *David D. Moon, D.O.*, 82 Fed. Reg. 19,385, 19,387 (2017)). The Government argued that "grounds exist for the revocation of Registrant's DEA [registration] pursuant to 21 U.S.C. §§ 823(f) and 824(a)(3)" and requests "the issuance of a DEA Final Order for the revocation" of Registrant's registration. *Id.* at 6, 7.

I find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations and Registrant's own statements, I find that neither Registrant, nor anyone purporting to represent Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. RFAA, at 6. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 C.F.R. § 1301.43(d) and 21 U.S.C. § 824(c)(2)(C). I, therefore, issue this Decision and

Order based on the record submitted by the Government, which constitutes the entire record before me. 21 C.F.R. § 1301.46.

II. Findings of Fact

A. Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. AT8751213 at the registered address of 188 Thomas Johnson Drive, Suite 202, Frederick, Maryland 21702. RFAAX 2 (Certification of Registration History). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on November 30, 2021. *Id.* The registration "is in active pending status until the resolution of administrative proceedings." *Id.*

B. The Status of Registrant's State License

On May 28, 2019, the MBP issued an Order for Summary Suspension of License to Medicine against Registrant. RFAAX 3 (Final Decision and Order on Order for Summary Suspension (hereinafter, Suspension Order)), at 1. After a hearing, the MBP issued a Suspension Order affirming Registrant's suspension on January 6, 2020, in which it concluded that summary suspension of Registrant's medical license "is imperatively required to protect the public health, safety, and welfare." *Id.* at 2. The MBP ordered that "the summary suspension of [Registrant's] license to practice medicine in Maryland remains in effect." *Id.* at 3.

According to Maryland's online records, of which I take official notice, Registrant's medical license status and Controlled Dangerous Substances (CDS) registration are both "expired."¹ Maryland Board of Physicians Profile Search, available at

¹ Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by e-mail (dea.addo.attorneys@dea.usdoj.gov).

<https://www.mbp.state.md.us/bpqapp/> (last visited date of signature of this Order), and Maryland Office of Provider Engagement and Regulation (Oper) Controlled Dangerous Substances Registration Search, available at <https://health.maryland.gov/ocsa/Pages/cdssearch.aspx> (last visited date of signature of this Order).

Accordingly, I find that Registrant currently is neither licensed to engage in the practice of medicine nor registered to dispense controlled substances in Maryland, the state in which Registrant is registered with the DEA.

III. Discussion

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner

possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Pursuant to the Maryland Controlled Dangerous Substances Act, "a person shall be registered by the Department before the person manufactures, distributes, or dispenses a controlled dangerous substance in the State or transports a controlled dangerous substance into the State." Md. Code Ann., Crim. Law § 5-301 (West 2020). Maryland law further defines "dispense" to "mean[] to deliver to the ultimate user of the human research subject by or in accordance with the lawful order of an authorized provider" and states that the term "includes to prescribe, administer, package, label, or compound a substance for delivery." *Id.* at § 5-101(l)(1)&(2).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to dispense controlled substances in Maryland, as his controlled substance license is "expired." As already discussed, a practitioner must hold a valid controlled substance license to dispense a controlled substance in Maryland. Thus, because Registrant lacks authority to handle controlled substances in Maryland, Registrant is not eligible to maintain a DEA registration. Accordingly, I order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. AT8751213 issued to Ernesto C. Torres, M.D. This Order is effective **[Insert Date Thirty Days From the Date of Publication in the Federal Register]**.

Timothy J. Shea,
Acting Administrator.

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